

**DISCLAIMER**

*This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).*

**COMMONWEALTH OF VIRGINIA**

**STATE CORPORATION COMMISSION**

AT RICHMOND, OCTOBER 2, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

NORTHERN VIRGINIA ELECTRIC COOPERATIVE,  
Petitioner,

v. CASE NO. PUE010512

VIRGINIA ELECTRIC AND POWER COMPANY  
d/b/a DOMINION VIRGINIA POWER,  
SMITHSONIAN INSTITUTION, AND U. S.  
GENERAL SERVICES ADMINISTRATION,  
Respondents.

For a Petition for Declaratory Judgment  
and Motion for Injunction

PRELIMINARY ORDER

On September 17, 2001, Northern Virginia Electric Cooperative ("NOVEC" or "the Cooperative") filed a Petition with the State Corporation Commission ("Commission"), requesting the Commission to declare that the proposed sale of electric energy by Virginia Electric and Power Company, d/b/a Dominion Virginia Power ("Virginia Power," "Dominion," or "the Company") to the Smithsonian Institution ("Smithsonian") or, alternatively, to the U. S. General Services Administration ("GSA"), for consumption at a facility to be constructed on a parcel of real estate located in Fairfax County, Virginia, is within service territory allotted to NOVEC and violates NOVEC's property rights under the certificate of public convenience and necessity

granted to the Cooperative by the Commission under the Utility Facilities Act, Chapter 10.1 (§ 56-265.1, et seq.) of the Code of Virginia. NOVEC has also requested the Commission to enjoin Virginia Power temporarily and permanently from selling and delivery directly or indirectly any power to the Smithsonian or GSA at the site.

In support of its Petition, among other things, NOVEC contends that it holds Certificate of Public Convenience and Necessity No. E-51 which, it maintains, authorizes it to provide electric service and facilities on the areas described pictorially on the map. The Cooperative alleges that the "footprint" for the Smithsonian facility is virtually entirely within NOVEC's certificated service territory, based on Fairfax County's map, showing siting and permitting of the Smithsonian facility. NOVEC asserts that its certificates of public convenience and necessity are important property rights entitled to the protection of the courts, the Commission, and the legislature. The Cooperative cites Town of Culpeper v. Virginia Electric and Power Co., 215 Va. 189, 193-194 (1974), as well as Prince George Electric Cooperative, For declaratory judgment and Petition of RGC (USA) Minerals, Inc. and RGC (USA) Minerals, Inc., For declaratory judgment, Case No. PUE960295, 1998 S.C.C. Ann. Rept. 344, 348; and Petition of Kentucky Utilities Company, d/b/a Old Dominion Power Company, For injunctive relief and/or

declaratory judgment against Powell Valley Electric Cooperative,  
Case No. PUE960303, 1999 S.C.C. Ann. Rept. 368, 375-376, in  
support of this proposition.

NOVEC alleges that it began working with the Smithsonian on or about August 6, 1996, to obtain specifications for the proposed museum facility and appropriate timelines for phases of construction in order to provide a plan for furnishing electric service to the Smithsonian. It maintains that during 1996, and "periodically, when appropriate," NOVEC informed the Smithsonian, through written communications and telephone conversations, that the bulk of the facility's usage of electric power was in NOVEC's certificated territory and that the Cooperative was the proper entity to provide electric service to the Smithsonian. September 17, 2001 Petition at 5-6.

NOVEC contends that, on or about January 25, 1999, it learned upon receiving a copy of a letter from Virginia Power to the Smithsonian, that Virginia Power had service facilities available in the area of the proposed facility, and that two-thirds of the site was in Virginia Power's service area. However, according to the Cooperative, this information did not take into account that the bulk of load and the majority of the footprint of the facility was situated in NOVEC's certificated territory.

NOVEC further alleges that on November 22, 2000, it, through Old Dominion Electric Cooperative ("ODEC"), sent a Cooperative Delivery Point Request, dated November 17, 2000, to Virginia Power, requesting a response by December 8, 2000. The Cooperative notes that it was advised in a copy of a letter by Virginia Power to the Smithsonian that Virginia Power intended to provide electric service to the Smithsonian on or about February 7, 2001. According to the Cooperative, this letter indicated that Virginia Power had received a February 1, 2001, request for electric service from the Smithsonian.

NOVEC further contends that on or about April 6, 2001, Virginia Power denied ODEC's requested delivery point. According to NOVEC, the reasons cited for the denial included (a) the assertion that the Smithsonian had requested that Virginia Power provide electric service and (b) the assertion that the facility was largely in Virginia Power's territory. Additionally, Dominion advised NOVEC, through ODEC, that service arrangements between Virginia Power and the Smithsonian were being finalized.

NOVEC maintains that Dominion does not hold a certificate of public convenience and necessity to furnish public utility services to the Smithsonian and that Dominion's authorized service area is merely adjacent to NOVEC's service territory. NOVEC asserts that, based on correspondence received from

Dominion, dated February 7, 2001 and April 6, 2001, the Smithsonian entered into an agreement with Dominion that Virginia Power should provide the electric service to the Smithsonian, to the exclusion of NOVEC.

The Cooperative seeks an injunction pendente lite to maintain the status quo and respective positions of the parties to this action until the Commission considers the evidence and rules on the propriety of a permanent injunction. Additionally, the Cooperative requests the Commission to enter an Order declaring that: (i) Virginia Power has violated the Utility Facilities Act; (ii) the Smithsonian and/or GSA project is within NOVEC's certificated territory; (iii) NOVEC is the proper provider of electric service to the Smithsonian and/or GSA and grant NOVEC the ability to provide electric service at the facility site; (iv) Virginia Power may not unreasonably deny a delivery point to ODEC on behalf of NOVEC and that Dominion's denial of the delivery point is not in the best interest of Virginia ratepayers and is not lawful; (v) the Commission declare that any transactions or contracts between Virginia Power and the Smithsonian and/or GSA are unlawful under the Utility Facilities Act and, therefore, unenforceable or void; and (vi) any provision of service by Dominion in NOVEC's certificated territory is unlawful and violates NOVEC's rights

granted by the Commission in the certificate it granted to NOVEC.

NOVEC has also asked the Commission to enter an Order temporarily and permanently enjoining Virginia Power from delivering or selling any electrical power or providing any service to the Smithsonian or GSA within NOVEC's certificated territory. Further, the Cooperative requested that the Commission enter an Order declaring Virginia Power has wrongfully and tortuously interfered with NOVEC's contractual rights, prospective contractual rights, and potential economic relationship with its customers and declaring that Virginia Power must pay the damages sustained by NOVEC because of the Company's unlawful actions. NOVEC served a copy of its Petition and Motion on: Virginia Power's registered agent and two directors; Kenneth Melson, United States Attorney; John Ashcroft, United States Attorney General; the Administrator of the General Services Administration, as well as the Secretary, and the General Counsel for the Smithsonian Institute.

NOW, UPON CONSIDERATION of NOVEC's Petition and Motion, the Commission is of the opinion and finds that this matter should be docketed; that a Hearing Examiner should be appointed to this proceeding; that Virginia Power, the GSA, and the Smithsonian should be permitted to file an Answer to the Petition and a pleading responsive to the Cooperative's Motion for an

injunction pendente lite; that inasmuch as the gravamen of the Cooperative's complaint is with Virginia Power's alleged provision of service to a customer, the bulk of whose load NOVEC contends is in its service territory, Virginia Power and NOVEC should jointly file a stipulation of facts and issues upon which they agree, together with a list of facts and issues upon which they disagree; and that an oral argument on the Cooperative's request for an injunction pendente lite should be held. It is our expectation that the Hearing Examiner will issue a prompt ruling on the injunction pendente lite and schedule such further proceedings as may be necessary with regard to this matter.

Further, we will permit our Staff to participate in this proceeding to the same extent permitted by 5 VAC 5-20-80 D of the Commission's Rules of Practice and Procedure ("the Rules").

Accordingly, IT IS ORDERED THAT:

(1) This matter is hereby docketed and assigned Case No. PUE010512.

(2) As provided by § 12.1-31 of the Code of Virginia and Rule 7:1, 5 VAC 5-20-120, a Hearing Examiner is appointed to conduct further proceedings on behalf of the Commission and to file a final report with a transcript of this proceeding.

(3) An oral argument is hereby scheduled before a Hearing Examiner for October 25, 2001, at 10:00 a.m., in the Commission's second floor courtroom, located in the Tyler

Building, 1300 East Main Street, Richmond, Virginia 23219, for the purpose of hearing argument on NOVEC's request for an injunction pendente lite.

(4) On or before October 12, 2001, Virginia Power shall file with the Clerk of the Commission, Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, an original and fifteen (15) copies of its answer or other pleadings responsive to NOVEC's Petition, together with an original and fifteen (15) copies of its response to the Cooperative's Motion. Dominion shall serve these documents on or before October 12, 2001, on all parties of record to this proceeding and shall hand-deliver a copy of the same to counsel for the Staff. Service upon NOVEC shall be directed to JoAnne L. Nolte, Esquire, PennStuart, P. O. Box 617, Richmond, Virginia 23218-0617. Service upon the counsel for the Commission Staff shall be directed to Sherry H. Bridewell, Senior Counsel, and Wayne Smith, Senior Counsel, Office of General Counsel, State Corporation Commission, Tyler Building, Tenth Floor, 1300 East Main Street, Richmond, Virginia 23219.

(5) On or before October 12, 2001, the GSA and/or Smithsonian may file with the Clerk of the Commission at the address noted above an original and fifteen (15) copies of their answer or other pleading responsive to NOVEC's Petition, together with an original and fifteen (15) copies of any



responses to the Cooperative's Motion for an injunction pendente lite. The GSA and Smithsonian shall serve these documents on or before October 12, 2001, on all parties of record, and counsel for the Cooperative, and shall arrange for overnight delivery of the answer and response upon counsel for the Commission Staff at the address set forth in Ordering Paragraph (4) above.

(6) On or before October 16, 2001, NOVEC and Virginia Power shall file with the Clerk of the Commission a joint stipulation of the facts and issues upon which they both agree, and shall in the same document also identify the facts and issues upon which they do not agree. On or before October 16, 2001, NOVEC and Dominion shall serve a copy of the foregoing document upon the Staff and all parties of record.

(7) NOVEC and Virginia Power shall respond to written interrogatories within three (3) business days after the receipt of the same. Except as so modified, discovery shall be in accordance with Part VI of the Rules.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to:  
JoAnne L. Nolte, Esquire, PennStuart, P. O. Box 617, Richmond, Virginia 23218-0617; Commonwealth Legal Services Corporation, Registered Agent for Virginia Electric and Power Company, d/b/a Dominion Virginia Power, 4701 Cox Road, Suite 301, Glen Allen, Virginia 23060; Keith E. Kaier, Director, Dominion Virginia

Power, 701 East Cary Street, Richmond, Virginia 23219; E. P. Wickham, Jr., Director, Dominion Virginia Power, P. O. Box 26666, Richmond, Virginia 23261; Kenneth Melson, First Deputy, Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia 22314; Paul J. McNulty, United States Attorney, Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia 22314; John Ashcroft, United States Attorney General, U. S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001; Stephen A. Perry, Administrator, General Services Administration, 1800 F Street, N.W., Washington, D.C. 20405; Lawrence M. Small, Secretary, Smithsonian Institute, 1000 Jefferson Drive, S.W., Washington, D.C. 20560-0012; General Counsel, Smithsonian Institute, 1000 Jefferson Drive, S.W., Suite 302, Washington, D.C. 20560-0012.

AN ATTESTED COPY of this Order shall also be sent by the Clerk of the Commission to: Kodwo Ghartey-Tagoe, Esquire, McGuireWoods, One James Center, 901 East Cary Street, Richmond, Virginia 23219; Pamela Walker, Deputy General Counsel, Virginia Electric and Power Company, P. O. Box 26532, Richmond, Virginia 23621; John F. Dudley, Senior Assistant Attorney General and Chief, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia; and the Commission's Office of General Counsel and Division of Energy Regulation.

